

REMARKS

Reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested. Claims 1-9 were presented for examination in the present application, current claims 1, 2 and 3 of which have been amended hereby. In addition, claims 7 to 9 have been cancelled without prejudice and claim 10 has been newly added.

The Office Action (1) objected to the claims 1-6 for informalities; (2) rejected claims 1-6 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,941,770 to Gemmer (hereinafter "the Gemmer reference") in view of U.S. Patent No. 5,008,666 to Gerbert et al. (hereinafter "the Gerbert reference"); and (3) rejected claims 7-9 under 35 U.S.C. 103(a) as being unpatentable over the combination of the Gemmer reference and the Gerbert reference.

Regarding item (1) identified above, it is respectfully submitted that present claims 1 through 6 effectively traverse the stated objection. Accordingly, reconsideration and withdrawal of such objection are respectfully requested.

With respect to item (2) identified above, it is respectfully submitted that present claims 1-7 are patentable over the cited reference combination (i.e., the Gemmer reference and the Gerbert reference). More particularly, it is respectfully submitted that neither cited reference nor the combination thereof disclose or suggest the invention defined by present claim 1. Present claim 1 reads on an electromagnetic traffic measurement or traffic control system including:

one or more electromagnetic induction loops comprising a pre-formed or pre-wound insulated electrically conducting material in one or a plurality of interconnected loops of a predetermined configuration, encapsulated in an outer layer or bandage adapted for adhesion to a road or pavement base as a complete composite loop configuration prior to application of a covering surface layer to the road or pavement base, wherein the outer layer or bandage comprises a bitumen impregnated geotextile base bandage adapted to support one or a plurality of insulated electrically conducted wires or cables, and upper

encapsulation tape, and an overlying adhesion bandage for securing the encapsulated loop to underlying pavement base. (emphasis added)

Whereas the Gemmer reference, in essence, reads on a method for applying one or more induction loop 10 on a road surface with:

Each induction loop 10 is composed of an electrically conductive conductor layer 15 which is applied to a cleaned road surface 11 directly in liquid form or with the intermediary of a carrier layer 13 and is sealed with a protective covering 14 after curing (FIG. 3). In order to produce such an induction loop 10, the road surface 11 is first thoroughly cleaned. A carrier layer 13, which consists of plastics material ... The conductor layer 15 formed in this way is subsequently sealed with a plastics material which, as protective covering 14... (col. 4, lines 30-50) (emphasis added).

In comparing the disclosure of the Gemmer reference with that which is recited in present claim 1, the Action seems to incorrectly equate the protective covering 14 of the Gemmer reference to both (i) the outer layer or bandage, and (ii) the covering surface layer of claim 1. (See part 3, pages 2-3 of the Action). It is respectfully submitted that this assertion is imprecise at least in that the protective covering 14, as taught by the Gemmer reference, is a single protective (plastic) covering applied directly to the conductive layer 15 after the curing thereof. While *the outer layer*, as defined by claim 1, is adhered to a road or pavement base as a complete composite loop configuration *prior to* the application of *the covering surface layer* to the road or pavement base. Thus, as the covering surface layer is applied subsequent to the outer layer, it is respectfully submitted that the protective covering 14 cannot read on both (i) the outer layer and (ii) the covering surface layer.

The Action seems to be arguing that the arrangement/relationship of the covering 14 and the conductor layer 15 is the same as the arrangement/relationship of the “outer layer”, the “one or a plurality of insulated electrically conducted wires or cables” and the “bitumen

impregnated geotextile base bandage” of claim 1. More particularly, the Action seems to suggest that a conductor layer 15 applied to a road surface filled with asphalt and subsequently covered by a single plastic cover 14 is the same as an outer layer or bandage with one or a plurality of insulated electrically conducted wires or cables supported by a bitumen impregnated geotextile base bandage adhered to a road or pavement base before the application of a covering surface layer. It is respectfully submitted that the outer layer/bandage, the conductive wires/cables, and the base bandage being adhered to a road or pavement base prior to a covering surface layer being applied to the road or pavement base is patentably distinct from a single liquid conductor layer being applied to a road surface and subsequently covered by a single plastic cover. Thus, it is respectfully submitted that the Gemmer reference at least fails to disclose or suggest the arrangement/relationship of the “outer layer”, the “one or a plurality of insulated electrically conducted wires or cables” and the “bitumen impregnated geotextile base bandage” as defined by claim 1. Accordingly, as the Gerbert reference, which was cited in the Action for disclosing “a covering plate” that purportedly reads on the upper encapsulation tape of claim 1, fails address and/or remedy the above-identified deficiencies associated with the Gemmer patent, reconsideration and withdrawal of the stated rejection of claim 1, and allowance thereof, are respectfully requested.

With regard to claims 2-6, all of which depend either directly or indirectly from claim 1, it is respectfully submitted that such claims are patentable over the cited reference combination at least for the reasons discussed above with respect to claim 1. Thus, reconsideration and withdrawal of the rejection of claims 2-6, and allowance thereof, are respectfully requested.

Concerning item (3) identified above, as previously stated, claims 7 to 9 have been hereby cancelled without prejudice. Accordingly, any comment as to the rejection thereof is moot.

With respect to newly added claim 10, which depends indirectly from claim 1, it is respectfully submitted that such claims is patentable over the cited reference combination at least for the reasons discussed with respect to claim 1 and that such claim incorporates no new matter. Accordingly, allowance of claim 10 is respectfully requested.

In sum, it is respectfully submitted that the present claims are patentable over each of the cited references and that such citations are clearly differentiated over the present invention as defined by the claims. Hence, this application is in condition for allowance. Accordingly, reconsideration and withdrawal of all rejections, and all objections of the claims, and allowance thereof, are respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David L. Barnes', written over a horizontal line.

David L. Barnes
Reg. No. 47,407
Attorney for Applicants

Date: September 16, 2004

MCCARTER & ENGLISH, LLP
Four Stamford Plaza, 107 Elm Street
Stamford, CT 06902
(203) 326-2973

HARTFORD: 622456.01